

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REBECCA N. BALLESTEROS,

Plaintiff(s),

vs.

MERS, et al.,

Defendant(s).

2:13-cv-01239-GMN-NJK

ORDER DENYING MOTION TO
INTERVENE

(Docket No. 28)

Pending before the Court is the emergency motion to intervene filed by Saticoy Bay LLC, Series 9509 Green Spruce (“Movant”). Docket No. 28. The Court ordered that any response be filed in opposition no later than November 26, 2013, Docket No. 29, but to date none has been filed. Accordingly, the Court has discretion to grant the motion as unopposed. *See* Local Rule 7-2(d). Nonetheless, the Court will consider the motion on its merits. For the reasons discussed below, the Court hereby **DENIES** the motion without prejudice.

I. BACKGROUND

Movant obtained title to 9509 Green Spruce Street through a foreclosure sale. *See* Docket No. 28 at 2. Movant is attempting to sell the property, but cannot do so in light of Plaintiff’s *lis pendens*. *Id.* Movant seeks to intervene in this case so that it may file a joinder to Defendants’ motion to dismiss and for release of *lis pendens*. *See id.* at Exh. 2.

II. ANALYSIS

The pending motion is brought to intervene as of right under Fed.R.Civ.P. 24(a)(2). *See* Docket No. 28 at 2. To prevail on such a motion, an applicant for intervention as of right must demonstrate that “(1) it has a significant protectable interest relating to the property or transaction

that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). The party seeking to intervene bears the burden of showing that *all* the requirements for intervention have been met. *Id.*; *see also United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1149 (9th Cir. 2010) ("Under Rule 24(a)(2), the burden of showing inadequate representation is on the applicant . . .").

The Court finds that the pending motion does not sufficiently address the controlling standards.¹ Of particular note, Movant fails to provide any explanation as to how the existing parties do not adequately represent its interests.² Indeed, Movant seeks intervention to file a joinder to the pending motion to dismiss and release the *lis pendens*, which Movant indicates "adequately set[s] forth" the grounds supporting that relief. *See* Docket No. 28 at 3.³

III. CONCLUSION

For the reasons discussed more fully above, the motion to intervene is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

DATED: December 3, 2013



NANCY J. KOPPE
United States Magistrate Judge

¹ The only authority cited in the motion is Fed. R. Civ. P. 24.

² "This Court considers three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Aerojet General*, 606 F.3d at 1153 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)).

³ Although the Court highlights herein the inadequacy regarding the representation requirement, it makes no findings that the motion is otherwise meritorious. Instead, to the extent Movant renews its motion, it should make a fuller showing as to all of the required elements.